

Committee on Resources

Witness Statement

TESTIMONY OF PAUL D. REID
PRESIDENT, REID PETROLEUM CORPORATION
REPRESENTING THE
SOCIETY OF INDEPENDENT GASOLINE MARKETERS OF AMERICA
BEFORE THE
HOUSE COMMITTEE ON RESOURCES
OVERSIGHT HEARING ON
"COLLECTION OF STATE TRANSACTION TAXES BY
TRIBAL RETAIL ENTERPRISES"

October 12, 1999

Good morning, Mr. Chairman and Members of the Committee. My name is Paul Reid. I am President of Reid Petroleum Corporation, headquartered in Lockport, New York. Our company owns and or supplies 150 retail motor fuels outlets in upstate New York.

I appear today on behalf of our company and the Society of Independent Gasoline Marketers of America ("SIGMA"). SIGMA is an association of over 260 independent gasoline marketers operating in all 50 states. In 1998, SIGMA members sold over 39 billion gallons of motor fuel, representing over 25 percent of all motor fuels sold in the United States. SIGMA members supply over 25,000 retail outlets across the nation and employ over 220,000 workers nationwide.

I am intimately familiar with this issue. Our company competes directly with dozens of tribal motor fuels retail outlets in upstate New York. Our company marked its 75th year in business in 1997 -- an occasion that generally would be a cause for celebration. However, in our case, this anniversary was a time to seriously consider our future. Reid Petroleum, as well as a number of legitimate taxpaying businesses in upstate New York are questioning whether we can continue to do business in the new millennium. The root cause of our problems is the issue under consideration by this Committee today. If Congress does not act soon to address the problem of the non-collection of state excise and sales taxes by tribal retail outlets, then several businesses in the upstate region may have no choice but to exit the business due to the unfair and unlawful competition caused by these tribal outlets.

Last year, this Committee heard testimony that established that several dozen tribes across the nation are willfully ignoring a series of U.S. Supreme Court decisions by not collecting lawful state excise taxes on

cigarettes, gasoline, and diesel fuel when these products are purchased by non-Native Americans. Everyone in this hearing room knows that this unlawful behavior is occurring in many states, including New York. We may disagree regarding the extent of the problem or the exact amount of state tax revenue that is being lost through this unlawful activity. But there is no disputing that the practice exists. Tribes are not collecting these taxes, states and localities are losing important tax revenue, cigarettes are being marketed tax-free to the public, including minors, through the Internet and retail stores, and non-tribal retailers are being forced out of business because of these practices. Moreover, our retail customers continue to pay fuel and tobacco taxes at our fully-taxed outlets. Why should our customers pay taxes to support schools, roads, mass transit, and other government programs while others do not? This speaks to the fundamental purpose of having an organized government in the first place. These facts have been established in past hearings on this issue. They should not be in dispute here today.

SIGMA believes that the question that must be addressed at this hearing is how to solve this problem. SIGMA and other trade associations have supported legislation in the past which, in our opinion, would have solved this problem. In every instance, tribal representatives have opposed this legislation. They have opposed legislation that would solve the problem through granting states a right to sue a tribe for non-collection of state excise taxes. The tribes opposed this legislation because they claimed it would infringe on their tribal sovereign immunity. Tribal representatives have opposed past and current legislation that would address this issue through the trust land acquisition process. These same tribal representatives have stated that the problem is limited in scope and that federal action is not necessary -- the states and tribes can work out these problems themselves.

Given the years that have passed since this problem was first brought to Congress' attention (I first contacted Jack Kemp regarding this issue in 1984), it is SIGMA's position that the tribes' opposition to any federal legislation simply is no longer credible. Federal legislation is needed. Congress has the authority under the U.S. Constitution to solve this problem, and, in fact, the U.S. Supreme Court has suggested that Congress may be the appropriate forum in which to fashion a solution. SIGMA urges this Committee to act.

Past legislative efforts to solve this problem may have been insensitive to legitimate and important tribal concerns. So a new solution must be found. However inaction, and opposition to all federal legislation on this issue, cannot continue and can only be regarded as pursuing injustice as a matter of federal policy with respect to this issue.

SIGMA urges this Committee in general, and you, Mr. Chairman, specifically, to become actively involved in crafting a legislative solution to this ongoing problem. The controversy will not go away. SIGMA and others will continue to press our case this year and in the future until this problem is addressed. This Committee, its Members, and our Nation's tribes have far more pressing problems facing them in the areas of Native American policy. But until the issue of non-collection of state excise taxes by tribes and their members is addressed, it will continue to taint the reputation of every Native American tribe and continue to make their public policy goals on Capitol Hill more difficult to achieve. SIGMA and others will not rest until this problem is addressed. That is a reality as the problem threatens the very survival of my member companies.

SIGMA would like to outline its views on the fundamental constructs that we believe must be included in such a solution. First, tobacco products and motor fuels should bear the same amount of government-imposed costs, including taxes, when sold to non-Native Americans from tribal and non-tribal retail outlets. This will permit tribal and non-tribal retailers to compete in the marketplace based upon their business skills, not on the basis of the marketing of a tax exemption.

Second, the taxes collected by tribal and non-tribal retailers must be remitted to an independent third party. Currently, non-tribal retailers remit their state excise taxes to the state. While SIGMA understands that some tribes do not view state taxes on their sales to non-Native Americans as legitimate, the Supreme Court disagrees with this view. Thus, SIGMA posits that the state taxes due on sales from tribal retail enterprises must leave the hands of the tribe. Permitting a tribe to collect the state tax, or a substitute tribal tax, and then to retain the funds is not acceptable as the funds will be used to subsidize the tribal commercial operations. If the tribes object to sending these funds to the appropriate state, then SIGMA suggests that the federal government may be the appropriate conduit for the collection and distribution of these funds.

Third, assuming these tax funds reach the federal government, a question arises as to how the funds should be distributed. From the state's point of view, these funds are state tax revenues that must be returned to the state. From the tribe's point of view, these funds should be returned to the tribe because they were generated from commercial activity on tribal land. SIGMA believes that both positions have merit. SIGMA suggests that this Committee consider some sort of revenue-sharing arrangement for these funds to address the legitimate interests of both tribes and states. As long as safeguards are put in place to assure that a tribe does not use these funds to subsidize its commercial operations, then SIGMA would support returning a portion of the funds to the appropriate tribe. These funds would then be used for important tribal governmental functions such as education, affordable housing, and health care. However, they must not be used to subsidize the tribe's smoke shops or motor fuel outlets.

Again, thank you for inviting me to testify today. SIGMA urges this Committee to address this issue through legislative action in the near future.

I would be pleased to answer any questions raised by my testimony.

#